

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROY A. DURHAM, JR.,
Plaintiff,
vs.

Case No. 1:13-cv-226
Black, J.
Litkovitz, M.J.

ROB JEFFREYS, et al.,
Defendants.

ORDER

This matter is before the Court on plaintiff's motion to defer ruling on the question of exhaustion of administrative remedies until plaintiff has had an opportunity to conduct discovery. (Doc. 125).

As background, in September 2016 the Sixth Circuit vacated this Court's grant of summary judgment to defendants in this case and remanded for further proceedings. (Doc. 108). On October 13, 2016, the Court ordered the parties to file supplemental briefs analyzing the exhaustion issues in this case in light of the analysis in the Sixth Circuit's opinion. (Doc. 110). The parties filed supplemental briefs and plaintiff filed a response to defendants' supplemental brief. (Docs. 120, 121, and 132).

After reviewing the parties' supplemental briefs, the Court concluded that the record at this juncture does not support a dismissal based on exhaustion. (Doc. 135 at 1). The Court reopened discovery and entered a revised scheduling order. (*Id.* at 1-2). Accordingly, plaintiff's motion to defer ruling (Doc. 125) is **DENIED AS MOOT**.

IT IS SO ORDERED.

Date: 3/13/17


Karen L. Litkovitz
United States Magistrate Judge